

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

V.

DAVID W. BUTLER,

Defendant.

2:00cv1827
Electronic Filing

MEMORANDUM ORDER

February 1, 2006

Butler has filed a motion asking that the Court reconsider its Memorandum Order dated December 29, 2006, denying Butler's motion for attorney fees and expenses under the Equal Access to Justice Act ("EAJA") that resulted from this litigation. Butler argues that he is entitled to costs under the EAJA even if he is not entitled to attorney's fees, and in support of that argument he relies on Section 2412(a)(1) of the EAJA which provides, in relevant part, as follows:

Except as otherwise specifically provided by statute, a judgment for costs, as enumerated in section 1920 of this title, but not including the fees and expenses of attorneys, **may be awarded** to the prevailing party in any civil action brought by or against the United States or any agency or any official of the United States acting in his or her official capacity in any court having jurisdiction of such action.

28 U.S.C. § 2412(a)(1)(Emphasis added). He notes that, unlike § 2412(d)(1)(A), which requires a finding that the Commission's position was not substantially justified before a district court can award attorney's fees, § 2412(a)(1) does not require such a finding as a condition to the award of costs. Thus, he argues that because he was the prevailing party, he is entitled to costs without regard to the reasonableness of the Commission's position in the litigation.

Under § 2412(1)(a), Butler is not entitled to costs, but such costs may be assessed against the Commission at the discretion of the district court. In this instance, the Court

decided that all parties shall bear their own costs.

ORDER OF COURT

Upon consideration of the Motion for Reconsideration of Order on Motion for Attorney Fees (**Document No. 196**) filed on behalf of Defendant, David W. Butler, and the Commission's response thereto, in accordance with the accompanying memorandum,

IT IS HEREBY ORDERED that the Motion for Reconsideration is **DENIED**.

s/ David Stewart Cercone
David Stewart Cercone
United States District Judge

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